

House Bill 330 (AS PASSED HOUSE AND SENATE)

By: Representatives Coan of the 101st, Reese of the 98th, Hamilton of the 23rd, Knox of the 24th, Marin of the 96th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 9 of Title 34 of the Official Code of Georgia Annotated, relating to workers' compensation, so as to change certain provisions relating to service of decisions of an administrative law judge and decisions of the appellate division; to provide that an employee's waiver of confidentiality includes past medical history with respect to any condition or complaint related to the condition for which the employee claims compensation; to provide the conditions under which employers from other states engaged in the construction industry with workers' compensation insurance coverage issued in such other states shall be considered to be in compliance with the requirement of providing insurance for payment of workers' compensation in this state; to provide that final settlement payments may be paid by the employer to a person or corporation appointed by the superior court in certain circumstances; to correct a cross-reference; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 9 of Title 34 of the Official Code of Georgia Annotated, relating to workers' compensation, is amended by revising subsection (f) of Code Section 34-9-102, relating to hearing before administrative law judge, as follows:

"(f) Decision of the administrative law judge. Within 30 days following the completion of evidence, unless the time for filing the decision is extended by the board, the administrative law judge shall determine the questions and issues and file the decision with the record of the hearing. At the time of the filing, a copy of the decision shall be ~~mailed~~ sent to all parties and counsel of record at their ~~last known~~ addresses of record. Notice to counsel of record of a party shall constitute service of notice to the party, if a copy of the decision was sent to the address of record of said party. The decision of the administrative law judge shall be made in the form of a compensation award, appropriately titled to show its purpose and containing a concise report of the case, with findings of fact and conclusions of law

and any other necessary explanation of the action taken. The administrative law judge may reconsider the official decision prior to its becoming final to correct apparent errors or omissions. The compensation award shall be final 20 days after issuance of notice of the award unless an appeal is filed in accordance with Code Section 34-9-103."

SECTION 2.

Said chapter is further amended by revising subsection (a) of Code Section 34-9-103, relating to appeal of decision, remand, and reconsideration, amendment, or revision of award, as follows:

"(a) Any party dissatisfied with a decision of an administrative law judge of the trial division of the State Board of Workers' Compensation may appeal that decision to the appellate division of the State Board of Workers' Compensation which shall have original appellate jurisdiction in all workers' compensation cases. An application for review shall be made to the appellate division within 20 days of issuance of notice of the award. The appellee may institute cross appeal by filing notice thereof within 30 days of the notice of the award. If a timely application for review, cross appeal, or both, is made to the appellate division, the appellate division shall review the evidence and shall then make an award with findings of fact and conclusions of law. A copy of the award so made on review shall immediately be sent to the parties and counsel of record at dispute at their addresses of record. Notice to counsel of record of a party shall constitute service of notice to the party, if a copy of the award was sent to the address of record of said party. Upon review, the appellate division may remand to an administrative law judge in the trial division any case before it for the purpose of reconsideration and correction of apparent errors and omissions and issuance of a new award, with or without the taking of additional evidence, or for the purpose of taking additional evidence for consideration by the appellate division in rendering any decision or award in the case. The findings of fact made by the administrative law judge in the trial division shall be accepted by the appellate division where such findings are supported by a preponderance of competent and credible evidence contained within the records."

SECTION 3.

Said chapter is further amended by revising Code Section 34-9-121, relating to compensation for injury outside of state, as follows:

"34-9-121.

(a) Unless otherwise ordered or permitted by the board, every employer subject to the provisions of this chapter relative to the payment of compensation shall secure and maintain full insurance against such employer's liability for payment of compensation

under this article, such insurance to be secured from some corporation, association, or organization licensed by law to transact the business of workers' compensation insurance in this state or from some mutual insurance association formed by a group of employers so licensed; or such employer shall furnish the board with satisfactory proof of such employer's financial ability to pay the compensation directly in the amount and manner and when due, as provided for in this chapter. In the latter case, the board may, in its discretion, require the deposit of acceptable security, indemnity, or bond to secure the payment of compensation liabilities as they are incurred; provided, however, that it shall be satisfactory proof of the employer's financial ability to pay the compensation directly in the amount and manner when due, as provided for in this chapter, and the equivalent of acceptable security, indemnity, or bond to secure the payment of compensation liabilities as they are incurred, if the employer shall show the board that such employer is a member of a mutual insurance company duly licensed to do business in this state by the Commissioner of Insurance, as provided by the laws of this state, or of an association or group of employers so licensed and as such is exchanging contracts of insurance with the employers of this and other states through a medium specified and located in their agreements with each other, but this proviso shall in no way restrict or qualify the right of self-insurance as authorized in this Code section. Nothing in this Code section shall be construed to require an employer to place such employer's entire insurance in a single insurance carrier.

(b)(1) Any employer from another state engaged in the construction industry within this state with a workers' compensation insurance policy issued under the laws of such other state so as to cover that employer's employees while in this state shall be in compliance with subsection (a) of this Code section if:

(A) Such other state recognizes the extraterritorial provisions of Code Section 34-9-242; and

(B) Such other state recognizes and gives effect within such state to workers' compensation policies issued to employers of this state.

(2) Nothing in this subsection shall be construed to void any insurance coverage.

~~(b)~~(c) The board shall have the authority to promulgate rules and regulations to set forth requirements for third-party administrators and servicing agents, including insurers acting as third-party administrators or servicing agents, with regard to their management or administration of workers' compensation claims. All Title 33 regulations shall remain in the Insurance Department.

~~(c)~~(d) Wherever a self-insurer has been required to post bond, should it cease to be a corporation, obtain other coverage, or no longer desire to be a self-insurer, the board shall be allowed to return the bond in either instance, upon the filing of a certificate certifying

to the existence of an insurance contract to take over outstanding liability resulting from any presently pending claim or any future unrepresented claims; and the board shall be relieved of any liability arising out of a case where the injuries were incurred, or liability therefor, prior to the returning of the bonds."

SECTION 4.

Said chapter is further amended by revising Code Section 34-9-207, relating to employee's waiver of confidentiality of communications with physician and release for medical records and information, as follows:

"34-9-207.

(a) When an employee has submitted a claim for workers' compensation benefits or is receiving payment of weekly income benefits or the employer has paid any medical expenses, that employee shall be deemed to have waived any privilege or confidentiality concerning any communications related to the claim or history or treatment of injury arising from the incident that the employee has had with any physician, including, but not limited to, communications with psychiatrists or psychologists. This waiver shall apply to the employee's medical history with respect to any condition or complaint reasonably related to the condition for which such employee claims compensation. Notwithstanding any other provision of law to the contrary, when requested by the employer, any physician who has examined, treated, or tested the employee or consulted about the employee shall provide within a reasonable time and for a reasonable charge all information and records related to the examination, treatment, testing, or consultation concerning the employee.

(b) When an employee has submitted a claim for workers' compensation benefits or is receiving payment of weekly income benefits or the employer has paid any medical expenses, the employee, upon request, shall provide the employer with a signed release for medical records and information related to the claim or history or treatment of injury arising from the incident, including information related to the treatment for any mental condition or drug or alcohol abuse and to such employee's medical history with respect to any condition or complaint reasonably related to the condition for which such employee claims compensation. Said release shall designate the provider ~~and shall state that it will~~ to whom the release is directed. If a hearing is pending, any release shall expire on the date of the hearing.

(c) If the employee refuses to provide a signed release for medical information as required by this subsection, any weekly income benefits being received by the employee shall be suspended and no hearing shall be scheduled at the request of the employee until such signed release is provided Code section and, in the opinion of the board, the refusal was not justified under the terms of this Code section, then such employee shall not be entitled to

135 any compensation at any time during the continuance of such refusal or to a hearing on the
136 issues of compensability arising from the claim."

137 **SECTION 5.**

138 Said chapter is further amended by revising Code Section 34-9-223, relating to lump sum
139 payments to trustees, as follows:

140 "34-9-223.

141 Whenever the board deems it expedient, any lump sum, subject to the provisions of Code
142 Section 34-9-222, or final settlement, subject to the provisions of Code Section 34-9-15,
143 shall be paid by the employer to some suitable person or corporation appointed by the
144 superior court of the county wherein the accident occurred or the original hearing was held
145 as trustee to administer such payment for the benefit of the person or persons entitled
146 thereto in the manner provided by the board. The receipt by such trustees of the amount
147 so paid shall discharge the employer or anyone else who is liable therefor."

148 **SECTION 6.**

149 Said chapter is further amended by revising subsection (d) of Code Section 34-9-385, relating
150 to bankruptcy of participants, as follows:

151 "(d) When a participant is determined to be an insolvent self-insurer, the board of trustees
152 is empowered to and shall assume on behalf of the participant its outstanding workers'
153 compensation obligations excluding penalties, fines, and claimant's attorneys' fees assessed
154 pursuant to subsection (b) of Code Section 34-9-108 and shall take all steps necessary to
155 collect, recover, and enforce all outstanding securities, indemnity, insurance, or bonds
156 furnished by such participant guaranteeing the payment of compensation provided in this
157 chapter for the purpose of paying outstanding obligations of the participant. The board
158 shall convert and deposit into the fund such securities and any amounts received under
159 agreements of surety, guaranty, insurance, or otherwise on behalf of the participant. Any
160 amounts remaining from such securities, indemnity, insurance, bonds, guaranties, and
161 sureties, following payment of all compensation costs and related administrative fees of the
162 board of trustees including attorneys' fees, and following exhaustion of all amounts
163 assessed and received pursuant to subsections (a) and ~~(c)~~(d) of Code Section 34-9-121 and
164 any applicable rule of the board may be refunded by the fund as directed by the board of
165 trustees, subject to the approval of the board, to the appropriate party one year from the
166 date of final payment, provided no outstanding liabilities remain against the fund."

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SECTION 7.

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All laws and parts of laws in conflict with this Act are repealed.